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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 OUTERBRIDGE ACCESS  
12 ASSOCIATION, SUING ON BEHALF OF  
13 DIANE CROSS; and DIANE CROSS, An  
Individual,

14 Plaintiffs,

15 v.

16 ROSS DRESS FOR LESS, INC. d.b.a.  
17 ROSS DRESS FOR LESS # 478;  
18 MANNA DEVELOPMENT GROUP, LLC.  
d.b.a. PANERA BREAD # 4279; MIRA  
MESA MARKETPLACE EAST, LLC and  
DOES 1 THROUGH 10, inclusive,

19 Defendants.

CASE NO. 08cv0045 BTM(CAB)

**ORDER DENYING MOTION TO  
DISMISS SUPPLEMENTAL STATE  
LAW CLAIMS**

20 Defendant Mira Mesa Marketplace East, LLC ("Defendant") has filed a motion to  
21 dismiss Plaintiff's supplemental state law claims. For the reasons discussed below, the  
22 Court **DENIES** Defendant's motion.  
23

24 **DISCUSSION**

25 Plaintiff filed this action on January 8, 2008. The Complaint asserts the following  
26 causes of action: (1) violation of the Americans With Disabilities Act ("ADA"), 42 U.S.C. §§  
27 12101, et seq.; (2) violation of the California Unruh Act (California Civil Code § 51), California  
28 Civil Code § 52, and the Disabled Persons Act. Defendant contends that the Court should

1 decline to exercise supplemental jurisdiction over Plaintiff's state claims because the claims  
2 raise a novel or complex issue of state law. 28 U.S.C. § 1367(c)(1).

3 According to Defendant, Plaintiff's state law claims raise unsettled issues of law which  
4 should be resolved by the California courts. Specifically, in Gunther v. Lin, 144 Cal. App. 4th  
5 233 (2006), the California Court of Appeal held that intentional discrimination was required  
6 to obtain damages under California Civil Code § 52(a) for access violations under the Unruh  
7 Act. This holding is contrary to Lentini v. Calif. Center for the Arts, 370 F.3d 837 (2004),  
8 which held that a violation of the ADA constitutes a violation of the Unruh Act, regardless of  
9 whether the plaintiff can prove intentional discrimination.

10 However, the Lentini court did not have the benefit of the Gunther court's analysis.  
11 In any event, the ultimate issue for a federal district court in applying state law is to determine  
12 what the highest state court would hold. Gravquick A/S v. Trimble Navigation Int'l Ltd., 323  
13 F.3d 1219, 1222 (9th Cir. 2003). State intermediate appellate court decisions are useful in  
14 determining what the highest state court would hold, but they are not binding on a federal  
15 court. Id. Whether this Court will continue to follow Lentini after Gunther is an issue that the  
16 Court need not decide at present.

17 Although Gunther and Lentini give rise to a unique conflict between Ninth Circuit and  
18 state appellate court construction of state law, the Court must still determine whether the  
19 exercise of its discretion to decline supplemental jurisdiction would comport with the  
20 "underlying objective of 'most sensibly accommodat[ing]' the values of 'economy,  
21 convenience, fairness, and comity.'" Executive Software North America, Inc. v. United States  
22 District Court for the Central District of California, 24 F.3d 1545, 1557 (9th Cir. 1994)  
23 (citations omitted). The Court recently considered the exercise of supplemental jurisdiction  
24 in very similar circumstances in Pinnock v. Solana Beach Do It Yourself Dogwash, Inc., Case  
25 No. 06cv1816 (Docket # 22), and concluded that the exercise of supplemental jurisdiction  
26 would best advance judicial economy, convenience, fairness, and comity.

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1 The Court is not persuaded by Defendant's argument that the Court's exercise of  
2 supplemental jurisdiction creates a danger of inconsistent rulings because Plaintiff has  
3 expressed an intention to pursue state law claims against Mira Mesa Marketplace West, LLC  
4 and The Home Depot in state court. The instant case involves different properties and  
5 different retail establishments; neither The Home Depot nor Mira Mesa Marketplace West,  
6 LLC (a different limited liability company than Mira Mesa Marketplace East, LLC), are  
7 defendants in this case.

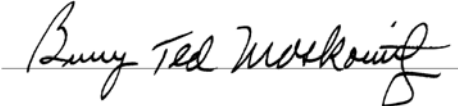
8 While the Court is aware that there is a split in opinion by the judges in the district over  
9 whether supplemental jurisdiction should be exercised over claims under Unruh and Cal. Civ.  
10 Code § 52, the Court sees no reason to deviate from its decision in Solana Beach v. Do It  
11 Yourself Dogwash, Inc. While the conflict between Lentini and Gunther may be unique, it  
12 does not override the other reasons to maintain supplemental jurisdiction over the state  
13 claims – to avoid duplicative litigation, with its concurrent expense, over the same nucleus  
14 of facts in separate courts.

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16 **CONCLUSION**

17 For the reasons discussed above, Defendant's motion to dismiss Plaintiff's state law  
18 claims is **DENIED**.

19 **IT IS SO ORDERED.**

20 DATED: May 5, 2008

21   
22 Honorable Barry Ted Moskowitz  
23 United States District Judge  
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